IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-12-2005

CORAM

THE HON'BLE MR. JUSTICE P.SATHASIVAM
and
THE HON'BLE MR. JUSTICE S.K.KRISHNAN

Writ Petition No.17505 of 2003

The State of Tamil Nadu
represented by its
Secretary to Government,
Home(Pol-II) Department,
Fort St. George,
Chennai - 600 009. ... Petitioner

vs

1. K. Loganathan

2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records pertaining to the order dated 06.03.2002 made in O.A. No.8970 of 1997 on the file of the Tamil Nadu Administrative Tribunal, Chennai, the second respondent herein.

For Petitioner : Mr. E. Sampath Kumar,
Government Advocate.

For R-1 : Mr. Ayangaraprabhu

O R D E R

(Order of the Court was made by P. Sathasivam, J.)

Aggrieved by the order of the Tamil Nadu Administrative Tribunal, Chennai, dated 06.03.2002, made in O.A. No.8970 of 1997, the Home Department, Government of Tamil Nadu, has filed the above Writ Petition.

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2. It is seen that the first respondent herein was working as Inspector of Police, Shevapet Police Station in Salem district from 02.04.1990 to 25.03.1991. On 03.05.1990, a case of murder was reported in Shevapet Police Station at 12.00 Noon, in respect of which, Cr. No.206 of 1990 under Sections 147, 148, 364, 341 and 302 IPC was registered against one Varadhan and 17 others. Charge sheet was laid and the case was tried by the learned Principal District Judge, Salem, in S.C. No.109 of 1991. The learned Sessions Judge, by judgment dated 28.10.1991, acquitted all the accused, stating that the charges against the accused have not been proved. After the acquittal in the criminal case, a charge memo in P.R.No.128 of 1992 under Rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, was served on the first respondent.

3. The charges are as follows :

> " (i) Perfunctory investigation in Shevapet P.S. Cr.No.206/90 u/s 147, 148, 364, 341 and 302 IPC.
>
> (ii) Indisciplinary conduct in allowing a private individual (viz) one James Raj Kumar to write the case diary and other records. "

4. The first respondent herein submitted his explanation. On considering the explanation and the charges levelled against him, the Superintendent of Police, Salem, prepared a minute in P.R. No.128 of 1992 holding the charges as proved. In so far as the first charge is concerned, after finding that the explanation offered by the delinquent is not acceptable, he arrived at a conclusion that charge No.1 is proved. With regard to the second count of the charge, the first respondent without disputing the same admitted having utilised the services of a private person, namely, James Raj Kumar. Therefore, the Superintendent of Police, Salem, had come to the conclusion that the act of the first respondent in allowing a private person to handle the station records was unwarranted and based on the admission of the first respondent, he found that charge No.2 was also proved. Agreeing with the findings of the Superintendent of Police, Salem, the Deputy Inspector General of Police, Vellore Range, by his order in C.No.B1/PR.30/92, dated 10.11.1992, awarded "Censure" effective from the date of order. Aggrieved by the same, the first respondent herein preferred an appeal to the Additional Director General of Police, Law and Order, Chennai-4. By order dated 19.04.1993, the Appellate Authority modified the punishment as "deferred censure for a period of four months", taking the explanation of the appellant as a mitigating circumstance.

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5. The Secretary to Government, Home (Pol.II) Department, Chennai – 9, on verification of the records and the orders passed by the Original and Appellate Authorities, took a suo motu review of the order and issued a show cause notice, dated 18.02.1997, under Rule 15(A)(1)(I) of the TNPSS (D&A) Rules, 1955, informing the first respondent herein as to why the punishment should not be reviewed and enhanced to withholding of increment without cumulative effect for one year and directed him to submit his further statement of defence within 15 days from the date of receipt of the said letter. Instead of submitting his explanation or defence, the first respondent herein approached the Tamil Nadu Administrative Tribunal by filing O.A.No.8970 of 1997. The Department filed a reply affidavit disputing the claim of the applicant therein. By the impugned order dated 06.03.2002, the Tribunal set aside the said notice and allowed his application and issued further direction regarding promotion, etc. The said order is under challenge in this Writ Petition.

6. Learned Government Advocate, by drawing our attention to the charges levelled against the first respondent, findings of the Enquiry Officer and the orders passed by the Original and Appellate Authorities, would contend that inasmuch as the charges are grave in nature, the Government is fully justified in issuing the show cause notice to review the punishment. According to him, Rule 15(A)(1)(I) of the TNPSS (D&A) Rules permits the Government to review the punishment passed in any case.

7. We have already extracted the two charges levelled against the first respondent herein. The Enquiry Officer found that both the charges were proved. As a matter of fact, with regard to the second charge, namely, conduct of the delinquent in allowing a private individual, i.e., James Raj Kumar, to write the case diary and other records, in his undated explanation to the Secretary to Government, Home (Pol.II) Department, Chennai-9, in paragraph No.4, the first respondent has specifically admitted the same. The said statement reads as under:

> " (xiii) Sir, I did not hand over any important and confidential documents to the private person to handle the same. The CDs which were written by James Kumar, were of routine nature only that too it was done in my presence only."

8. Thus it is clear that the first respondent had permitted James Raj Kumar to make entries in the Case Diaries (CDs).

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9. Though the learned counsel appearing for the first respondent submitted that at the relevant time he was not in a position to write because of an injury on his hand, that was not projected before the authorities and even if the above statement is acceptable, he cannot permit a third party to write in CD file. He could have asked one of his staff namely, Head Constable or any other Police Constable, to make entries in the CD and in other records. Taking note of these aspects and considering the fact that the punishment of Censure awarded is not adequate, the Government, by exercising the suo motu power under Rule 15(A)(1)(I) of the TNPSS (D&A) Rules, issued the show cause notice dated 18-02-1997, asking the first respondent herein to submit his further statement of defence, if any.

9. In the light of the statutory provisions and also taking note of the fact that even in respect of the charges under Rule 3 (a) of TNPSS (D&A) Rules 1955, the authority concerned is empowered to impose appropriate punishment including withholding of increments or promotion including stoppage at an efficiency bar, we are of the view that the Tribunal is not justified in interfering with the notice issued by the Government. It is made clear that we are not expressing anything on the merits of the proposed action or the defence of the first respondent herein. He is free to submit his defence including the delay in taking action by invoking the suo motu power. In this regard, it has to be mentioned that even according to the first respondent, in so far as the suo motu power is concerned, if it is exercised by the State Government and there is no limitation for the same. However, it is for the Government to consider and pass appropriate orders. The learned counsel for the first respondent has also brought to our notice that inasmuch as he attained superannuation, the Government is not justified in issuing the show cause notice at this juncture. As observed earlier, the first respondent is free to raise this objection also before the Government and it is for the Government to consider and pass appropriate orders in accordance with law.

10. In the light of what is stated above, the impugned order of the Tribunal dated 06.03.2002 made in O.A.No.8970 of 1997 is quashed and the writ petition is allowed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai.

+ 1 cc to Mr. Addl Government Pleader SR No.47207

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